IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 167 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KOLI RAMSHI LAKHABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 167 of 2001

MR HRIDAY BUCH for Petitioner No. 1-2

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 17/04/2002

ORAL JUDGEMENT

#. In the incident, which took place on 17.10.1983 at 5.00 p.m. Complainant-Bhura Kana Hathi and his son Aling Bhura were seriously injured for which 5 accused persons

viz. (1) Koli Lakhabhai Naranbhai, (2) Koli Ramshi Lakhabhai (present applicant No.1), (3) Koli Monghiben Lakhabhai (present applicant No.2), (4) Koli Dhaniben Lakhabhai and (5) Koli Rasilaben Ramshi were charged for the offences under Sections 147, 148, 149, 324, 325 and 326 IPC and tried by the learned JMFC, Maliya Hathina. Out of the aforesaid 5 accused, accused No.4-Koli Dhaniben Lakhabhai and accused No.5-Koli Rasilaben Ramshi were acquitted by the learned Magistrate by his judgment and order dated 25.5.1993 by giving benefit of doubt. However, learned Magistrate found remaining 3 accused; (1) Koli Lakhabhai Naranbhai, (2) Koli Ramshi Lakhabhai and (3) Koli Monghiben Lakha guilty for various offences and sentenced them by his judgment and order dated 25.5.1993 passed in Criminal Case No.38/84, as per the chart mentioned below :-

1. Koli Lakha Naranbhai (passed away during appeal)

Offences Sentence Fine

147 1 month Rs.100/= or 4 days

148 2 months Rs.200/= or 8 days

323 r/w.149 15 days Rs.100/= or 4 days

324 r/w.149 2 months Rs.200/= or 8 days

325 r/w.149 1 year Rs.500/= or 1 month

326 r/w.149 1 year Rs.500/= or 1 month

All the sentences to run concurrently, fine already deposited.

2. Koli Ramshi Lakha (applicant No.1)

Offences Sentence Fine

148 2 months Rs.200/= or 8 days

323 r/w.149 15 days Rs.100/= or 4 days

324 r/w.149 2 months Rs.200/= or 8 days

325 r/w.149 1 year Rs.500/= or 1 month

326 r/w.149 1 year Rs.500/= or 1 month

All the sentences to run concurrently, fine already deposited.

3. Koli Monghiben Lakhabhai (applicant No.2)

Offences	Sentence	Fine
147	1 month	Rs.100/= or 4 days
323 r/w.149	15 days	Rs.100/= or 4 days
324 r/w.149	15 days	Rs.100/= or 4 days
325 r/w.149	3 months	Rs.200/= or 15 days
326 r/w.149	3 months	Rs.200/= or 15 days

All the sentences to run concurrently, fine already deposited.

#. Aggrieved by the aforesaid order of conviction and sentence passed by the learned Magistrate, all the aforesaid 3 accused filed joint Criminal Appeal No.40/93 before the Court of Sessions Judge at Junagadh, which was renumbered as Criminal Appeal No.5/99 before the Court of Additional Sessions Judge at Veraval. The said appeal stood abetted qua appellant accused No.1-Koli Lakha Naranbhai on his death, as he died during the pendency and final disposal of that appeal. However, learned Additional Sessions Judge, Veraval by his impugned judgment and order dated 23.3.2001 dismissed the appeal of two other appellants-accused viz. Koli Ramshi Lakha (present applicant No.1) and Koli Monghiben Lakhabhai (present applicant No.2) and confirmed the order of conviction and sentenced passed by the learned Magistrate.

#. The aforesaid order of conviction and sentence passed by the courts below have been challenged by the petitioners-accused by way of this revision application.

#. In view of the concurrent findings of facts recorded by the courts below, learned counsel Shri Hriday Buch for the petitioners-accused, who are personally present

before this court, have not challenged the order of conviction passed by the learned Magistrate confirmed in appeal by the learned Additional Sessions Judge. However, he submitted that in the instant case, the incident in question took place way back on 17.10.1983 i.e. almost 19 years from today and both the accused, who are son and mother respectively suffered sufficiently as there was a hanging sword on their heads for all these years and considering the peculiar facts and circumstances of this case, interest of justice would be served by reducing the sentence as already undergone by the petitioners-accused by enhancing the amount of fine imposed by the courts below and the amount of fine enhanced and already paid by the accused before the Trial Court be paid to the injured Aling Bhura, son of Bhura Kana Hathi, who also died because of his old age during the pendency of this case. Mr.Buch further submitted that the accused petitioner No.1- Koli Ramshi Lakhabhai is a labourer and maintaining his family including his mother-accused-applicant No.2 by doing labour work and this was the solitary case registered against them and they are not involved in other offence. He, therefore, submitted that without laying down law substantive sentence may be reduced by enhancing the fine imposed by the courts below.

#. Having regard to the facts and circumstances of the case, Mr.Kodekar, learned APP was hardly in a position to oppose this.

#. Considering the peculiar facts and circumstances of the case, I am of the considered opinion that the interest of justice would be served by confirming the order of conviction recorded by the courts below convicting both the accused for the respective offences mentioned in the chart produced hereinabove by reducing the substantive sentence as already undergone and enhancing the fine suitably in addition to what has been ordered by the courts below.

#. Accordingly, the impugned orders passed by the courts below are hereby confirmed. However, substantive sentence imposed against the accused mentioned in the chart hereinabove is reduced as sentence already undergone. The courts below have imposed fine of Rs.1,500/= in all against the petitioner No.1-accused-Koli Ramshi Lakhabhai for various offences mentioned in the chart, the same is hereby maintained. In addition to that, the accused-Petitioner No.1-Koli Ramshi Lakhabhai is ordered to pay fine of Rs.3,000/= in default he shall have to undergo sentence of 6 months

R.I. Additional fine of Rs.3,000/= be paid on or before 1.7.2002 by accused-petitioner No.1-Koli Ramshi Lakhabhai. Similarly, fine of Rs.700/= in all imposed by the courts below against the accused-petitioner No.2-Koli Monghiben Lakhabhai for various offences mentioned in the chart. In addition to that she is ordered to pay a fine of Rs.2,000/= failing which she will have to undergo sentence of 3 months R.I. Additional fine of Rs.2,000/= be paid on or before 1.7.2002 by accused-petitioner No.2-Koli Monghiben Lakhabhai.

#. If enhanced fine is paid by both the petitioners-accused, then the same shall be paid to injured witness-Aling Bhura, son of Bhura Kana Hathi including the fine already deposited before the trial Court, as ordered by the courts below. This petition is partly allowed on the point of sentence only. Rule is made absolute to the aforesaid extent only. Direct Service is permitted.

(B.J.Shethna, J.)

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